

State of New Hampshire Banking Department

In re the Matter of:) Case No.: 09-014
)
)
State of New Hampshire Banking)
) Order to Show Cause
Department,)
)
Petitioner,)
)
and)
)
CBSK Financial Group Inc (d/b/a CBSK)
)
Financial Group and d/b/a American Home)
)
Loans), Brent McElwee, Cyndi McElwee,)
)
Lori Pendray, Dorita Kay, and William)
)
Halapin,)
)
Respondents)

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 397-A and RSA 541-A.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 397-A:17, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue an order to show cause why license revocation and penalties for violations of New Hampshire Banking laws should not be imposed.

Pursuant to RSA 397-A:18, the Department has the authority to issue a complaint setting forth charges whenever the Department is of the opinion that the licensee or person over whom the Department has jurisdiction is violating or has violated any provision of RSA Chapter 397-A, or any rule or order thereunder.

1 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or
2 rescind such orders as are reasonably necessary to comply with the
3 provisions of the Chapter.

4 Pursuant to RSA 397-A:21, the Commissioner has the authority to
5 suspend, revoke or deny any license and to impose administrative penalties
6 of up to \$2,500.00 for each violation of New Hampshire banking law and
7 rules.

8 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
9 that is or may be an unfair or deceptive act or practice under RSA 358-A and
10 exempt under RSA 358-A:3,I or that may violate any of the provisions of
11 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
12 Commissioner may hold hearings relative to such conduct and may order
13 restitution for a person or persons adversely affected by such conduct. The
14 Commissioner may utilize all remedies available under the Consumer
15 Protection Act.

16 **NOTICE OF RIGHT TO REQUEST A HEARING**

17 The above named Respondents have the right to request a hearing on
18 this Order to Show Cause, as well as the right to be represented by counsel
19 at each Respondent's own expense. All hearings shall comply with RSA 541-A.
20 Any such request for a hearing shall be in writing, and signed by the
21 Respondent or the duly authorized agent of the above named Respondent, and
22 shall be delivered either by hand or certified mail, return receipt
23 requested, to the Banking Department, State of New Hampshire, 53 Regional
24 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within
25 10 days of the Department's receipt of the request. If the Respondent fails

1 to appear at the hearing after being duly notified, such person shall be
2 deemed in default, and the proceeding may be determined against the Respondent
3 upon consideration of the Order to Show Cause, the allegations of which may be
4 deemed to be true.

5 If any of the above named Respondents fails to request a hearing within
6 30 calendar days of receipt of such order or reach formal settlement with the
7 Department within that time frame, then such person shall likewise be deemed
8 in default, and the orders shall, on the thirty-first day, become permanent,
9 and shall remain in full force and effect until and unless later modified or
10 vacated by the Commissioner, for good cause shown.

11 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

12 The Staff Petition dated January 22, 2009 (a copy of which is attached
13 hereto) is incorporated by reference hereto.

14 **ORDER**

15 WHEREAS, finding it necessary and appropriate and in the public
16 interest, and consistent with the intent and purposes of the New Hampshire
17 banking laws, and

18 WHEREAS, finding that the allegations contained in the Staff Petition,
19 if proved true and correct, form the legal basis of the relief requested,

20 It is hereby ORDERED, that:

21 1. Respondent CBSK Financial Group Inc (d/b/a CBSK Financial
22 Group and d/b/a American Home Loans) ("Respondent CBSK
23 Financial") shall show cause why penalties in the amount of
24 \$2,500.00 should not be imposed against it;

25 2. Respondent Brent McElwee ("Respondent McElwee") shall show

1 cause why penalties in the amount of \$2,500.00 should not be
2 imposed against him;

3 3. Respondent Cyndi McElwee ("Respondent Ms. McElwee") shall
4 show cause why penalties in the amount of \$2,500.00 should
5 not be imposed against her;

6 4. Respondent Lori Pendray ("Respondent Pendray") shall show
7 cause why penalties in the amount of \$2,500.00 should not be
8 imposed against her;

9 5. Respondent Dorita Kay ("Respondent Kay") shall show cause why
10 penalties in the amount of \$2,500.00 should not be imposed
11 against her;

12 6. Respondent William Halapin ("Respondent Halapin") shall show
13 cause why penalties in the amount of \$2,500.00 should not be
14 imposed against him;

15 7. The above named Respondents shall show cause why, in addition
16 to the penalties listed in Paragraphs 1 through 6 above, the
17 \$500.00 examination fee should not be paid to the Department;

18 8. Respondents shall be jointly and severally liable for the
19 above amounts alleged in Paragraphs 1 through 7 above;

20 It is hereby further ORDERED that:

21 9. Along with the administrative penalties listed for the above
22 named Respondents, the outstanding sum of \$500.00 shall be
23 immediately paid; and

1 10. Failure to request a hearing within 30 days of the date of
2 receipt or valid delivery of this Order shall result in a
3 default judgment being rendered and administrative penalties
4 imposed upon the defaulting Respondent(s) .
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6 SIGNED,
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8 Dated: 01/22/09

 /s/
 PETER C. HILDRETH
 BANK COMMISSIONER
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Lori Pendray, Dorita Kay, and William)
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Halapin,)
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Respondents)

I. STATEMENT OF ALLEGATIONS

The Staff of the Banking Department, State of New Hampshire (hereinafter "Department") alleges the following facts:

Facts Common on All Counts:

1. Respondent CBSK Financial Group Inc (d/b/a CBSK Financial Group and d/b/a American Home Loans) (hereinafter "Respondent CBSK Financial") was licensed as a Mortgage Banker from at least January 14, 2005 until its license was revoked on October 20, 2008.
2. Respondent Brent McElwee (hereinafter "Respondent McElwee") was the 50% shareholder and President of Respondent CBSK Financial, when licensed by the Department.
3. Respondent Cyndi McElwee (hereinafter "Respondent Ms. McElwee")

1 was the 50% shareholder and Secretary-Director of Respondent
2 CBSK Financial, when licensed by the Department.

3 4. Respondent Brent McElwee (hereinafter "Respondent McElwee") was
4 the 50% shareholder and President of Respondent CBSK Financial,
5 when licensed by the Department.

6 5. Respondent Lori Pendray (hereinafter "Respondent Pendray") was
7 the Chief Financial Officer and Treasurer of Respondent CBSK
8 Financial, when licensed by the Department.

9 6. Respondent Dorita Kay (hereinafter "Respondent Kay") was the
10 Vice President of Respondent CBSK Financial, when licensed by
11 the Department.

12 7. Respondent William Halapin (hereinafter "Respondent Halapin")
13 was the Vice President of Respondent CBSK Financial, when
14 licensed by the Department.

15 **Violation of RSA 397-A:12,V Failure to Pay Examination Fee (1 Count):**

16 8. Paragraphs 1 through 7 are hereby realleged as fully set forth
17 herein.

18 9. The Department conducted an examination of Respondent CBSK
19 Financial on April 30, 2007, while Respondent CBSK Financial was
20 still licensed with the Department.

21 10. On August 5, 2008, the Department mailed the report of examination
22 and invoice for \$500.00 to Respondent CBSK Financial, via U.S.
23 Certified Mail Return Receipt requested, which the post office
24 returned to the Department on August 11, 2008.

25 11. The Department, via U.S. mail, mailed a second notice on September

8, 2008 and a third notice on October 9, 2008.

12. The above named Respondents did not respond to any of the three notices for payment of the \$500.00 invoice.

13. To date, the above named Respondents still owe the \$500.00 examination fee for the one day examination.

II. ISSUES OF LAW

The staff of the Department, alleges the following issues of law:

1. The Department realleges the above stated facts in Paragraphs 1 through 13 as fully set forth herein.

2. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker or broker activities pursuant to NH RSA 397-A:2 and RSA 397-A:3.

3. RSA 397-A:12,V provides that the expense of such examination shall be chargeable to and paid by the licensee. Each of the above named Respondents violated this provision on at least one occasion as alleged above. To date, the above named Respondents have failed to pay the \$500.00 examination invoice.

4. RSA 397-A:13,VI provides that any officer, owner, manager or agent of any licensee shall reply promptly in writing, or other designated form, to any written inquiry from the Department. Respondent McElwee, Respondent Ms. McElwee, Respondent Pendray, Respondent Kay and Respondent Halapin each violated this provision on at least one occasion as alleged above.

5. RSA 397-A:17,I provides in part that the Commissioner may by order, upon due notice and opportunity for hearing, assess

1 penalties or deny, suspend, or revoke a license or application if
2 it is in the public interest and the applicant, respondent, or
3 licensee, any partner, officer, member, or director, any person
4 occupying a similar status or performing similar functions, or
5 any person directly or indirectly controlling the applicant,
6 respondent, or licensee: (a) has violated any provision of RSA
7 Chapter 397-A or rules thereunder, or (b) has not met the
8 standards established in RSA Chapter 397-A.

9 6. RSA 397-A:18,I provides that the Department may issue a complaint
10 setting forth charges whenever the Department is of the opinion
11 that the licensee or person over whom the Department has
12 jurisdiction, has violated any provision of RSA 397-A or orders
13 thereunder.

14 7. RSA 397-A:21,IV provides that any person who, either knowingly or
15 negligently, violates any provision of Chapter 397-A, may upon
16 hearing, and in addition to any other penalty provided for by
17 law, be subject to an administrative fine not to exceed
18 \$2,500.00, or both. Each of the acts specified shall constitute
19 a separate violation, and such administrative action or fine may
20 be imposed in addition to any criminal penalties or civil
21 liabilities imposed by New Hampshire Banking laws.

22 8. RSA 397-A:21,V provides that every person who directly or
23 indirectly controls a person liable under this section, every
24 partner, principal executive officer or director of such person,
25 every person occupying a similar status or performing a similar

1 function, every employee of such person who materially aids in the
2 act constituting the violation, and every licensee or person acting
3 as a common law agent who materially aids in the acts constituting
4 the violation, either knowingly or negligently, may, upon notice
5 and opportunity for hearing, and in addition to any other penalty
6 provided for by law, be subject to suspension, revocation, or
7 denial of any registration or license, including the forfeiture of
8 any application fee, or the imposition of an administrative fine
9 not to exceed \$2,500, or both. Each of the acts specified shall
10 constitute a separate violation, and such administrative action or
11 fine may be imposed in addition to any criminal or civil penalties
12 imposed.

13 **III. RELIEF REQUESTED**

14 The staff of the Department requests the Commissioner take the following
15 action:

- 16 1. Find as fact the allegations contained in section I of this Staff
17 Petition;
- 18 2. Make conclusions of law relative to the allegations contained in
19 section II of this Staff Petition;
- 20 3. Assess fines and administrative penalties in accordance with RSA
21 397-A:21, for violations of Chapter 397-A, in the number and amount
22 equal to the violations set forth in section II of this Staff
23 Petition; and
- 24 4. Take such other administrative and legal actions as necessary for
25 enforcement of the New Hampshire Banking Laws, the protection of

1 New Hampshire citizens, and to provide other equitable relief.

2 **IV. RIGHT TO AMEND**

3 The Department reserves the right to amend this Staff Petition and to
4 request that the Commissioner take additional administrative action.
5 Nothing herein shall preclude the Department from bringing additional
6 enforcement action under RSA 397-A or the regulations thereunder.

7
8 Respectfully submitted by:

9
10 /s/
Maryam Torben Desfosses
11 Hearings Examiner

01/22/09
Date